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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/490,867	01/24/2000	Sam E. Kinney JR.	046700-5010	7744
28977	7590	09/27/2004	EXAMINER	
MORGAN, LEWIS & BOCKIUS LLP 1701 MARKET STREET PHILADELPHIA, PA 19103-2921			BASHORE, ALAIN L	
			ART UNIT	PAPER NUMBER
			3624	

DATE MAILED: 09/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/490,867	KINNEY, SAM E.	
Examiner	Art Unit		
Alain L. Bashore	3624		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 04 June 2004.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-20 and 39-44 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-20 and 39-44 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 39-40 are rejected under 35 U.S.C. 101 as non-statutory because the method claims as presented do not claim a technological basis. Without a claimed basis, the claim may be interpreted in an alternative as involving no more than a manipulation of an abstract idea and therefore non-statutory under 35 U.S.C. 101. In contrast, a method claim that includes in the preamble and body of the claim structural / functional interrelationships that are solely by computer (and non-trivial) are considered to have a technological basis [See *Ex parte Bowman*, 61 USPQ2d 1669, 1671 (Bd. Pat. App. & Inter. 2001) – used only for content and reasoning since not precedential].

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-10, 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausubel (383) in view of Rackson et al in further view of (Popolo and Douglas).

Ausube (383) discloses a method, system, and computer program product on computer useable medium of conducting an auction between a plurality of potential bidders where there is generated a sequence of values for a comparative bid parameter (col 4, lines 29-39; col 2, lines 51-67; col 3, lines1-67; col 4, lines 1-29). Participants of the auction include an originator and at least one potential bidder (col 3, lines 1-5).

The received first bid information represents a first bid that is originally defined in a context of the first bidder (col 4, lines 5-10). Information reflective of the submitted first bid is stored, the stored information enabling a relative comparison of submitted bids (col 6, lines 11-27). Since multiple bidders and multiple bids are transmitted, and second bid information is transmitted.

Ausubel (383) discloses performing a non-linear transformation (col 8, lines 1-19) using a lookup table (col 8, line 5). Since Ausubel (383) teaches performing his demand curve using a look-up table with a non-increasing constraint (i.e. linear), there is disclosed performing a combination of linear, non-linear, and look-up table transformations simultaneously (col 8, lines 15-19).

Ausubel (383) does not explicitly disclose:

a Dutch auction; and,

a third view associated with a second auction item having a second characteristic that is different from said first characteristic.

Rackson et al discloses a Dutch auction (col 2, line 63, col 3, lines 32-40, col 20, lines 64-67; col 21, lines 1-25).

It would have been obvious to one with ordinary skill in the art to modify the auction to Ausubel (383) to include a Dutch auction because Rackson et al teaches multiple formats for auctions utilizing an optimum bidder such as using a Dutch auction format (col 2, lines 46-65).

The term "characteristic" is taken in the broadest definition of the term to mean an attribute. Utilizing the broadest definition of the term, any view is defined as a "characteristic" different than a "characteristic" of another view.

Popolo discloses views associated with a second auction item having a second characteristic that is different from said first characteristic (col 1, lines 59-67; col 2, lines 1-7).

Douglas discloses a user viewing in one characteristic a document that was originally submitted by a different user with a different characteristic (col 1, lines 39-67; col 2, lines 1-25).

It would have been obvious to one with ordinary skill in the art to include a third view associated with a second auction item having a second characteristic that is different from said first characteristic because Popolo teaches viewing different characteristics (units of measures) of various auction items to create new views as needed in auctions (col 2, lines 5-6) and context because Douglas teaches the desirability to edit or add comments to textual information (col 1, lines 15-25).

Both Douglass and Ausubel (383) are considered within the same broad related art endeavor of textual information processing.

5. Claims 39-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausubel (383) in view of Rackson et al in further view of Holland, Jr. et al.

Ausube (383) discloses a method, system, and computer program product on computer useable medium of conducting an auction between a plurality of potential bidders where there is generated a sequence of values for a comparative bid parameter (col 4, lines 29-39; col 2, lines 51-67; col 3, lines 1-67; col 4, lines 1-29). Participants of the auction include an originator and at least one potential bidder (col 3, lines 1-5).

The received first bid information represents a first bid that is originally defined in a context of the first bidder (col 4, lines 5-10). Information reflective of the submitted first bid is stored, the stored information enabling a relative comparison of submitted bids (col 6, lines 11-27). Since multiple bidders and multiple bids are transmitted, and second bid information is transmitted.

Ausubel (383) discloses performing a non-linear transformation (col 8, lines 1-19) using a lookup table (col 8, line 5). Since Ausubel (383) teaches performing his demand curve using a look-up table with a non-increasing constraint (i.e. linear), there is disclosed performing a combination of linear, non-linear, and look-up table transformations simultaneously (col 8, lines 15-19).

Ausubel (383) does not explicitly disclose:  
a Dutch auction; and,  
sequentially transmitting information reflective of bid sequence values that continues until a second and or third bid is reached.

Rackson et al discloses a Dutch auction (col 2, line 63, col 3, lines 32-40, col 20, lines 64-67; col 21, lines 1-25).

It would have been obvious to one with ordinary skill in the art to modify the auction to Ausubel (383) to include a Dutch auction because Rackson et al teaches multiple formats for auctions utilizing an optimum bidder such as using a Dutch auction format (col 2, lines 46-65).

Holland, Jr. et al discloses sequentially transmitting information reflective of bid sequence values that continues until a second and or third bid is reached (col 2, lines 24-43).

It would have been obvious to one with ordinary skill in the art to include sequentially transmitting information reflective of bid sequence values that continues until a second and or third bid is reached because Holland, Jr. et al teaches multiple parameters require consideration sequentially for multiple bids (col 2, lines 24-43; cl 25).

### ***Response to Arguments***

6. Applicant's arguments with respect to claims of record have been considered but are moot in view of the new ground(s) of rejection.

The rejection regarding claims 1-5 under 35 U.S.C 101 is moot since the claims now recite a technical basis.

Regarding further argument of State Street, the State Street decision does not use the term "technical basis", and the decision does not specifically address the

technology basis issue at hand. The rationale for the technology basis requirement may be found in the above-cited Ex parte Bowman.

### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alain L. Bashore whose telephone number is 703-308-1884. The examiner can normally be reached on about 7:00 am to 4:30 pm (Monday thru Thursday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 703-308-1065. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Alain L. Bashore  
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Art Unit 3624